

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLEMENTE TUI TELE ATOFAU,

Defendant.

CASE NO. C17-0153-JCC

ORDER

This matter comes before the Court on Defendant's motion to dismiss count three of the Indictment, Felon in Possession of a Firearm (Dkt. No. 46). Defendant argues that the statute defining the crime, Title 18, U.S.C. section 922(g)(1), is facially unconstitutional and unconstitutional as applied, because it exceeds Congress's powers under the Commerce Clause. (*Id.* at 1.) Defendant's motion is untimely under Federal Rule of Criminal Procedure 12(b)(3). The pretrial motions deadline was April 26, 2018, and Defendant filed the present motion on May 7, 2018. (*See* Dkt. Nos. 28, 46.) Defendant has not shown good cause for delay, and thus the Court need not consider the motion. Fed. R. Crim. P. 12(c)(3).¹

¹ The Court notes that Defendant's legal arguments have been soundly rejected by the Ninth Circuit and other circuit courts addressing this issue. *United States v. Polanco*, 93 F.3d 555, 563 (9th Cir. 1996); *United States v. Gonzales*, 307 F.3d 582, 586 (9th Cir. 2002). In addition, the Supreme Court recently denied a petition for certiorari containing the same argument. *Kitchen v. United States*, No. 17-7521 (U.S. May 14, 2018).

1 Thus, Defendant's motion to dismiss count three of the indictment (Dkt. No. 46) is
2 DENIED as untimely.

3 DATED this 22nd day of May 2018.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE